

CENTER FOR DISABILITY ACCESS
Chris Carson, Esq., SBN 280048
Dennis Price, Esq., SBN 279082
Amanda Seabock, Esq., SBN 289900
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

All Star Hospitality, Inc., a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of All Star Hospitality, Inc., a
California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
level C-5 quadriplegic. He cannot walk and also has significant manual
dexterity impairments. He uses a wheelchair for mobility and has a specially
equipped van.

2. Defendant All Star Hospitality, Inc. owned the real property located at

1 or about 2358 Lombard Street, San Francisco, California, in September 2018.

2 3. Defendant All Star Hospitality, Inc. owned the real property located at
3 or about 2358 Lombard Street, San Francisco, California, in October 2018.

4 4. Defendant All Star Hospitality, Inc. owned the real property located at
5 or about 2358 Lombard Street, San Francisco, California, in December 2018.

6 5. Defendant All Star Hospitality, Inc. owns the real property located at or
7 about 2358 Lombard Street, San Francisco, California, currently.

8 6. Defendant All Star Hospitality, Inc. owned Days Inn located at or about
9 2358 Lombard Street, San Francisco, California, in September 2018.

10 7. Defendant All Star Hospitality, Inc. owned Days Inn located at or about
11 2358 Lombard Street, San Francisco, California, in October 2018.

12 8. Defendant All Star Hospitality, Inc. owned Days Inn located at or about
13 2358 Lombard Street, San Francisco, California, in December 2018.

14 9. Defendant All Star Hospitality, Inc. owns Days Inn (“Motel”) located at
15 or about 2358 Lombard Street, San Francisco, California, currently.

16 10. Plaintiff does not know the true names of Defendants, their business
17 capacities, their ownership connection to the property and business, or their
18 relative responsibilities in causing the access violations herein complained of,
19 and alleges a joint venture and common enterprise by all such Defendants.
20 Plaintiff is informed and believes that each of the Defendants herein,
21 including Does 1 through 10, inclusive, is responsible in some capacity for the
22 events herein alleged, or is a necessary party for obtaining appropriate relief.
23 Plaintiff will seek leave to amend when the true names, capacities,
24 connections, and responsibilities of the Defendants and Does 1 through 10,
25 inclusive, are ascertained.

26
27 **JURISDICTION & VENUE:**

28 11. The Court has subject matter jurisdiction over the action pursuant to 28

1 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
2 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

3 12. Pursuant to supplemental jurisdiction, an attendant and related cause
4 of action, arising from the same nucleus of operative facts and arising out of
5 the same transactions, is also brought under California's Unruh Civil Rights
6 Act, which act expressly incorporates the Americans with Disabilities Act.

7 13. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
8 founded on the fact that the real property which is the subject of this action is
9 located in this district and that Plaintiff's cause of action arose in this district.

10
11 **FACTUAL ALLEGATIONS:**

12 14. Plaintiff went to the Motel in September 2018, October 2018 and
13 December 2018 with the intention to avail himself of its goods or services,
14 motivated in part to determine if the defendants comply with the disability
15 access laws.

16 15. The Motel is a facility open to the public, a place of public
17 accommodation, and a business establishment.

18 16. Transaction counters are one of the facilities, privileges, and advantages
19 offered by Defendants to patrons of the Motel.

20 17. Unfortunately, the transaction counter at the Motel was more than 36
21 inches in height. In fact, the transaction counter was about 48 inches high.

22 18. There was no lowered, 36 inch portion of the transaction counter at the
23 Motel for use by persons in wheelchairs to conduct transactions.

24 19. Currently, the transaction counter at the Motel is more than 36 inches
25 in height.

26 20. Currently, there is no lowered, 36 inch portion of the transaction
27 counter at the Motel for use by persons in wheelchairs.

28 21. Parking spaces are another one of the facilities, privileges, and

1 advantages offered by Defendants to patrons of the Motel.

2 22. Unfortunately, during plaintiff's visit to the subject property in
3 September 2018, cars regularly parked in the access aisles that are reserved
4 for persons with disabilities. The cars did not have disability placards, license
5 plates or tags. These cars parked in the access aisle that should have been
6 available for persons with disabilities.

7 23. In January 2019, when an investigator went to the property to capture
8 images and get various measurements, the investigator saw that cars parked in
9 in the access aisles that are reserved for persons with disabilities. The cars did
10 not have disability placards, disability license plates or tags.

11 24. The defendants have no policy of prohibiting ambulatory persons, who
12 have no right to use the parking stalls designed for persons with disabilities,
13 from using the parking stalls.

14 25. Guest rooms are also one of the facilities, privileges, and advantages
15 offered by Defendants to patrons of the Motel.

16 26. The Motel's website did not allow customers to book accessible guest
17 rooms online.

18 27. Currently, the Motel's website does not allow customers to book
19 accessible guest rooms online.

20 28. Defendants have failed to maintain in operable working condition those
21 features of facilities and equipment that are required to be readily accessible to
22 and usable by persons with disabilities at the Subject Property.

23 29. Plaintiff personally encountered these barriers.

24 30. This inaccessible facility denied the plaintiff full and equal access and
25 caused him difficulty.

26 31. The defendants have failed to maintain in working and useable
27 conditions those features required to provide ready access to persons with
28 disabilities.

1 32. The barriers identified above are easily removed without much
2 difficulty or expense. They are the types of barriers identified by the
3 Department of Justice as presumably readily achievable to remove and, in fact,
4 these barriers are readily achievable to remove. Moreover, there are numerous
5 alternative accommodations that could be made to provide a greater level of
6 access if complete removal were not achievable.

7 33. A common barrier removal project is modifying transaction counters to
8 make a portion of the counter accessible. This is a simple construction task,
9 well within the capabilities of any general contractor. The task can be
10 completed easily and for a modest price.

11 34. Plaintiff will return to the Motel to avail himself of its goods or services
12 and to determine compliance with the disability access laws. He is currently
13 deterred from doing so because of his knowledge of the existing barriers. If the
14 barriers are not removed, the plaintiff will face unlawful and discriminatory
15 barriers again.

16 35. Given the obvious and blatant nature of the barriers and violations
17 alleged herein, the plaintiff alleges, on information and belief, that there are
18 other violations and barriers on the site that relate to his disability. Plaintiff will
19 amend the complaint, to provide proper notice regarding the scope of this
20 lawsuit, once he conducts a site inspection. However, please be on notice that
21 the plaintiff seeks to have all barriers related to his disability remedied. See
22 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
23 encounters one barrier at a site, he can sue to have all barriers that relate to his
24 disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

36. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

37. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals

1 with disabilities. 42 U.S.C. § 12183(a)(2).

2 38. Under the 2010 Standards, where the approach to the sales or service
3 counter is a parallel approach, such as in this case, there must be a portion of
4 the sales counter that is no higher than 36 inches above the floor and 36 inches
5 in width and must extend the same depth as the rest of the sales or service
6 counter top. 2010 Standards § 904.4 & 904.4.1.

7 39. Here, no such accessible counter has been provided in violation of the
8 ADA.

9 40. Any business that provides parking spaces must provide accessible
10 parking spaces. 2010 Standards § 208. Under the 2010 Standards, one in
11 every six accessible parking spaces must be van accessible. 2010 Standards §
12 208.2.4.

13 41. Here, the defendants allowed cars without disability placards, disability
14 license plates or tags to park in the in the access aisle. This is a violation.

15 42. Under the ADA, public accommodations that own or operate a place of
16 lodging have an obligation to “ensure that individuals with disabilities can
17 make reservations for accessible guest rooms during the same hours and in the
18 same manner as individuals who do not need accessible rooms.” 28 C.F.R. §
19 36.302(e)(1)(i).

20 43. Here, the Motel’s failure to provide disabled individuals the ability to
21 book accessible guestrooms online through their website, like non-disabled
22 individuals, is a violation ADA.

23 44. The Safe Harbor provisions of the 2010 Standards are not applicable
24 here because the conditions challenged in this lawsuit do not comply with the
25 1991 Standards.

26 45. A public accommodation must maintain in operable working condition
27 those features of its facilities and equipment that are required to be readily
28 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

1 46. Here, the failure to ensure that the accessible facilities were available
2 and ready to be used by the plaintiff is a violation of the law.

3
4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
5 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
6 Code § 51-53.)

7 47. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
10 that persons with disabilities are entitled to full and equal accommodations,
11 advantages, facilities, privileges, or services in all business establishment of
12 every kind whatsoever within the jurisdiction of the State of California. Cal.
13 Civ. Code §51(b).

14 48. The Unruh Act provides that a violation of the ADA is a violation of the
15 Unruh Act. Cal. Civ. Code, § 51(f).

16 49. Defendants’ acts and omissions, as herein alleged, have violated the
17 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
18 rights to full and equal use of the accommodations, advantages, facilities,
19 privileges, or services offered.

20 50. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
21 discomfort or embarrassment for the plaintiff, the defendants are also each
22 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
23 (c).)

24 51. Although the plaintiff was markedly frustrated by facing discriminatory
25 barriers, even manifesting itself with minor and fleeting physical symptoms,
26 the plaintiff does not value this very modest physical personal injury greater
27 than the amount of the statutory damages.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12
13 Dated: January 14, 2019

CENTER FOR DISABILITY ACCESS



14
15
16 By:

17 _____
18 Chris Carson, Esq.
19 Attorney for plaintiff
20
21
22
23
24
25
26
27
28